(1)

Supreme Court, U.S.
FILED

No. 01-

001443 FEB 26 2001

In the Supreme Court of the United States

OFFICE OF THE CLERK

Ramón González Duarte, et. al.,

Respondent

v.

Jorge Aponte Figueroa, et. al.,

Petitioner

On Petition for a Writ of Certiorari to the Supreme Court of Puerto Rico

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QUESTIONS PRESENTED

1. Whether the state Court's decision, which cannot be reconciled with controlling Federal Law precedent, does away with the "just cause" requirement under Section 201(c) of the Labor Management and Reporting Act of 1959, 29 U.S.C. § 431 (2) in ordering the production of documents to union members who did not establish the requisite nexus between the documents requested and the any alleged misreported and/or illegal activity.

2. Does the "just cause" requirement under Section 201 (c) of the Labor Management and Reporting Act of 1959, 29 U.S.C. § 431(c) extend to documents kept and/or maintained under a health and welfare and/or pension plan maintained under the Employee Retirement Income Security Act ("ERISA"), 29 U.S. C. § 1021 et. seq.

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6 peitioner states that he is the president of Unión de Trabajadores de los Muelles, Local 1740, a labor organization in Puerto Rico, affiliated to the International Longshoremen's Association which in turn, is affiliated to the American Federation of Labor- Congress of Industrial Organizations.

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No. 01-

In the Supreme Court of the United States

Ramon Gonzalez Duarte, et al.
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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The resolution denying certiorari of the Supreme Court of Puerto Rico (App., infra, 1) is not reported. The Judgment of the Appeals Court of Puerto Rico (App., infra, 2-16) is not reported.

JURISDICTION

The judgment of the Supreme Court of Puerto Rico was entered November 28, 2000. The jurisdiction of this Court rests upon 28 U.S.C. § 1258 and Rule 47 of the Rules of the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 201 © of the Labor Management and Reporting Act of 1959, 29 U.S.C. § 431©

"Every labor organization required to submit a report under this subchapter shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under duty enforceable practice at the suit of any member of such organization in any state court of competent jurisdiction or in the District Court of United States for the district in which such labor organizations maintains its principal

office, to permit such member for just cause to examine any books, records, and accounts necessary to verify such report. The court in such action may, in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorneys fees to be paid by the defendant, and cost of the action

29 U.S.C. § 436:

"Every person required to file any report under this subchapter shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts and applicable resolutions, and shall keep such records available for examination for a period of less than five years after the filing of the documents based on the information which they contain. "

29 U.S.C. § 1201

Duty of Disclosure and Reporting

Summary plan description and information to be furnished to participants and beneficiaries.

1. The administrator of each employee benefit plan shall cause to be furnished in accordance with section 1024(b) of this title to each participant covered under the plan and to each beneficiary who is receiving benefits under the plan - (1) a summary plan description described in section 1022(a)(1) [1] of this title; and 1025(a) and (c) of this title. (b) Reports to be filed with Secretary of Labor. The administrator shall, in accordance with section 1024(a) of this title, file with the Secretary (1) the annual report containing the information required by section 1023 of this title..."

STATEMENT OF THE CASE

I. Factual Background

Petitioner, Jorge Aponte Figueroa, is the president of Unión de Trabajadores de los Muelles Local 1740, AFL-CIO (hereinafter the union) which represents about 1,300 dockworkers in Puerto Rico. The union, an affiliate of the International Longshoremen's Association (hereinafter "ILA".), is a labor organization as defined in the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. § 401. (App. 2-3) As such, it is required to file annual financial forms with the Secretary of the U.S. Department of Labor under section 201 © of LMRDA, 29 U.S.C. sec. 431. (App. 3-4) Pursuant thereto, labor organizations are required to permit members for just cause to examine the books, records and accounts of the union's business activities, which might be necessary to verify these annual reports. (29 U.S.C. Sec. 431©)

Respondents are dockworkers and members of the union who were seeking to displace Mr. Aponte Figueroa as union president. During the heat of an election campaign, they wrote Mr. Aponte Figueroa by letter dated October 6, 1998 requesting copies of various documents including, the LM reports filed before the U.S.

Department of Labor. (App. 3) Additionally, they requested to inspect other union financial records. (App. 4-5) On October 16, 1998, the union responded by letter and included copies of the LM3 reports, which it had filed for the years 1996-1997. (App. 4) Additionally, the union answered some questions posed by the letter but referred a request for the names and addresses of its members and other union business matters to its board of directors. Respondents did not provide any reasons whatsoever for requesting the documentation requested by their initial letter. Thereafter, by letter dated November 2, 1998 respondents reiterated their earlier request but this time stated that their request for information was due to "doubts" they had about the LM reports the union had filed with the Department Labor. More particularly, the letter stated that "according to the reports presented by the president there are presently 1300 union workers which according to our understanding, should produce in the port of San Juan no less than the sum of 500,000 man hours worked. If this is true, the union should the receiving a total of over $300,000.00 dollars in approximate income. This amount is substantially different than the one reported in the

L.M. 3 for the years 1996–1997." (App. 5)

Sometime thereafter, the parties met and agreed to refer Respondent's request to the board of directors of the union. While this process was pending, the dissident dockworkers presented a internal union complaint before the ILA complaining, *inter alia,* that Mr. Aponte Figueroa was not enforcing the union contract with respect to certain working conditions and that he was mismanaging the union funds, allegations which were all dismissed by the ILA after a hearing on the merits of the complaint. (App. 6) Other than respondents' assertions, there is no evidence that Mr. Aponte Figueroa was ever charged or convicted of any civil or criminal wrongdoing. (App. 2-6)

While this controversy was brewing, the union notified respondents that they would permit the inspection of the records so requested according to certain conditions. (App. 7) However, when they learned that respondents had filed a complaint against Mr. Aponte Figueroa, the union decided to detain the examination of the documents until the administrative procedure before the ILA was concluded. (App. 6-7) The ILA concluded that Mr. Aponte

Figueroa had not violated the union's constitution or contract and provided Respondents with an explanation for any variance between the LM report and the union's books and records. This determination was notified to respondents by letter dated February 8, 1999. (App. 6)

II. Proceedings Below

Unsatisfied with the union's and the ILA's answer to their complaint and/or answer to their request to review the union's records, on February 11, 1999, Respondents filed a complaint for injunctive and other relief against the Mr. Aponte Figueroa as president of the union, in the Commonwealth Courts based on the provisions of LMRDA [1]. (App.6-7) On September 1, 1999, the Superior Court of San Juan (The Court of First Instance), granted Respondent's summary judgment motion and ordered a permanent injunction against Petitioner that required Petitioner to permit

1 More particularly Respondents requested "copy of the financial records of the Union filed before the federal department of labor in (Forms LM-3); copy of all audit reports performed by the union as well as the pension and benefits plan of the union; a list of the active Union members; copy of all reports of hours worked by the union employees on a weekly, monthly, and annual basis; Copy of the report rendered by the employers to the Union of the percentage of dues money withheld; Accounts ledger and records of Union payments and expenses; The amount of money received by the Union for dues and initiation fees."

Respondents to examine the aforementioned books, records and accounts of the union. The court also ordered the payment of Five Hundred dollars ($500) to Respondents as attorneys' fees. (App. 8) Thereafter, Petitioner filed a timely appeal to the Circuit Court of Appeals, Regional Circuit I - San Juan (hereinafter "the Appeals Court") which affirmed the decision and order of the Superior Court of San Juan pursuant to Judgment dated August 31, 2000. *Inter alia*, the Appeals Court found that Respondents had established "just cause" for its request to require Petitioner's to produce the documents in question. The Court's decision was based its interpretation of the provisions of LMRDA. (App. 12-26) The Petitioner filed a timely appeal of this decision to the Supreme Court of Puerto Rico which Court, denied certiorari on November 22, 2000. The Court's denial was entered on November 28, 2000. The present Petition for Writ of Certiorari is based on the Supreme Court of Puerto Rico's denial of Petitioner's Writ of Certiorari. (App. 1) In denying the Petitioner's appeal, the Appeals Court determined, *inter alia,* that Respondents had met their burden of establishing the "just cause" requirement of LMRDA. It found that Respondent "had

expressed that their purpose in examining the documents . . . was to verify that the management of the union was appropriate, given certain discomforting matters raised which they believed were inconsistent with certain reports filed with the Secretary of Labor". The Court concluded that this this request was legitimate under the circumstances and that because of this, the Petitioner was required to allow Respondents to inspect these documents. (App. 21-26) The Court reasoned that as members of the union " (Respondents) have a right to be informed of the operations of the organism which represents them before their employer, including the utilization and the disposition of the monies paid by them and other union members for the purpose of dues." (App. 23-24)

REASONS FOR GRANTING THE PETITION

In ordering the production of documents requested by Respondents, the Appeals Courts erred on two very important substantive matters. First, the Court failed to find that federal substantive law has consistently held that "just cause" is not based on mere speculation but on objective evidence that would lead a reasonable union member to further inquiry. Secondly, the Appeals

Court erred by also ordering the production of documents clearly outside the possession and control of the Union. These documents belong to a totally different entity, are covered by a totally different federal law, and administered by a substantially different division within the U. S. Department of Labor. Thus, the Appeals Court's order in this respect is totally devoid of any basis in federal substantive law. See: Employee Income Security Act (ERISA), 29 U.S.C. 1021 et seq.

I. Review is Warranted In This Case Because the Puerto Rico Appeals Court Failed to Apply Controlling Precedent to he Facts of This Case

This case presents important and recurring questions governing the circumstances under which a union member may review the books and records of a labor organization under Section 201 © of the Labor Management and Reporting Act of 1959, 29 U.S.C. § 431©. This law provides, in relevant part, that upon a showing of "just cause" a union member may inspect the books and records of a labor organization. Federal Courts have differed generally as to what constitutes "just cause" but as a general rule, it has been interpreted to mean whether "...a reasonable union member

would be put to further inquiry...or whether..reason would require substantiation." Fruit and Vegetable Packers and Warehouse and Local 760 v. Morley, 378 F.2d 378 F.2d 738; (9th Cir. 1967); Fernandez-Montes v. Allied Pilots Association, 987 F.2d 278 (5th Cir. 1993). To that extent, while the burden of showing "just cause" on the individual member may be "minimal", the statute demands the establishment of a causal relationship between the records sought to be accessed and the union's federal filings. Thus, the suing plaintiff must "make a showing of circumstances that would put a reasonable union member on notice of a possible discrepancy between the records requested to be kept under Sections 431 and 436. A union member must specify what he is seeking to verify in the LM Report and how he believes the records he or she is requesting will assist him. Fernandez-Montes v. Allied Pilots Association, 987 F. 2d at p. 286 (5th Cir. 1993). As set forth in this case, under 431, "union members must come forth with more than bare, conclusionary allegations ..." reflecting a true dispute between the LM Reports and the union's actual activity and its report to the Secretary of Labor.

The Court of Appeals of Puerto Rico failed to consider that the statute does not allow a whole scale inclusion of all documents regardless of their import or relation to the LM reports filed by unions. Access to union books, records and accounts are not unfettered. Conley v. United Steelworkers of America, Local 1014, 549 F2d. 1122 (7th Cir. 1977) citing Antal v. District 5, United Mine Workers of America, 451 F2d 1187, 1189 (3rd Cir. 1971). Thus, believing that some union members might harass union officers with repeated requests for documents, the LMRDA only requires the production of financial records when the request is based on "good cause". For this reason the law imposes on the moving party the burden of showing "just cause" for seeking the information and that the request is not based on "idle curiosity". See Mallick v. International Board of Electrical Workers Union, 749 F2d 771; 776 (D.C. Cir. 1984)

In the Fernandez - Montes decision, supra, the 5th Circuit held that the "just cause" requirement of Section 431 was not met because plaintiff was unable to show a reasonable basis for suspecting that the union's federal filings might not comport with

the union's records and activities. In this case the court found that plaintiff's request for certain audiotapes or transcripts of meetings held by the union did not establish any reasonable basis to suspect that the union's federal filings did not comport with the union's activities. Thus, plaintiff's request to verify said audiotapes and transcripts were denied despite his assertion that they would permit him to verify whether the union's filings complied with the union's constitution and bylaws filed by the union with the Secretary of Labor.

The 7th Circuit recently affirmed this longstanding principle in the case of Kinslow v. American Postal Worker's Union, Chicago Local, 222 F.3rd 269 (7th Cir. 2000). There, although the court felt that the 5th Circuit reasoning in Fernandez-Montes, supra, was too limiting on union members, it nevertheless agreed that, "in pursuing judicial enforcement of this right, the plaintiff has the burden of showing that he has just cause for seeking the information and …that the request cannot be based on idle curiosity, citing Mallick, supra. It is important to note that in the Kinslow case, the defendant had been indicted when the request for inspection of documents was

made and had been convicted of embezzlement by the time the case was decided on appeal. Under this scenario, it is clear that union members could suspect some wrongdoing within the union. Therefore, a request, based on this information could undoubtedly lead a reasonable union member to further inquiry. This, the Court held was completely justified under the circumstances. The court stated "...because either the indictment or the convictions would instill in any reasonable person a level of skepticism surpassing reasonable suspicion, the Union's argument that Kinslow lacked just cause is patently frivolous".

Federal Courts have consistently held that the clear import of the statute is that some objective evidence of impropriety must be produced. Thus while, Congress could have required unions to open their books to any union member who alleged improper expenses, it set up a mechanism for reporting aggregate financial figures, together with a right, if those figures arouse sensible suspicions to inspect the underlying records. That right does not extend to "wholesale random audits" in support of insurgent campaigns in union elections. Spinowitz v. Herrity, 672 F. Supp. 670 (EDNY

1987); Johnson v. Local 1199, Hospital Care Employees Union, 121 LRRM 2889, 106 Labs. Cas. (C.C.H. ¶ 12.217 (S.D.N.Y. 1986). Here, the test is whether a reasonable union member could be stirred to further inquiry, not whether an opposition might choose to hunt for potentially damaging campaign material against an incumbent.

Although the Appeals Court of Puerto Rico clearly acknowledged the existence of these clearly enunciated principals, it, nevertheless, ignored them when it applied the facts of this case thereby substituting its own sense of justice instead of controlling federal precedent. In this regard, it is important to point out that there is no evidence whatsoever liking Mr. Aponte Figueroa to any civil or criminal investigation neither before or after the requests were made for documents and/or inspection. Second, there is no objective evidence to show that the information reported by the union in these reports was either mathematically or functionally incorrect. The Court's finding that Respondents had some justification and/or reason for requiring the inspection of these documents is based on clearly unadulturated speculation. Thus, there was no basis for the court's conclusion that they had magically

calculated figures that were different than those set forth in the LM Report filed by the Union. This speculation does not lead a reasonable person to make further inquiry objectively.

By reaching this conclusion the Court miserably failed to consider that the request for these documents was made at a time of an election campaign between Jorge Aponte Figueroa wherein Respondents sought to replace Petitioner Jorge Aponte Figueroa as president of the union. As noted, a union member cannot base his request on unsupported allegations and/or conclusions especially when it is clear from the circumstances of the case that he is hunting for potentially damaging campaign material against an incumbent. Thus, for this reason federal courts have held that the right to inspect does not extend to "wholesale random audits" in support of insurgent campaigns in union elections. See: Spinowitz v. Herrity, 672 F. Supp. 670 (EDNY 1987); Johnson v. Local 1199, Hospital Care Employees Union, 121 LRRM 2889, 106 Labs. Cas. (C.C.H. ¶ 12.217 (S.D.N.Y. 1986). Again, the test is whether a reasonable union member could be stirred to further inquiry, not whether an opposition is entitled to search for skeletons in the closet of an

incumbent officer. Thus, the union member is required to show an objective factor which leads him to believe that the union's LM reports do not comport with the real picture.

In the present case the Court of Appeals of P.R. did not require Respondents to meet this burden and therefore, its decision to order petitioner to produce and permit inspection of these documents should not be allowed to stand. If this Honorable Court were to allow this case to stand it would allow the wholesale auditing of unions without the requisite showing of "just cause", a result clearly not contemplated by the statute. Thus, union members would have the unfettered right to subject unions like petitioner to countless audits and/or intrusions of their otherwise legitimate operations.

We submit that the statute was created as a balancing right between the members right to information and a union's legitimate right to protect against incessant audits of union's assets. In this case, Respondents did not even bother to acquire the LM report at the U.S. Department of Labor as the statute requires but instead, asked and a got a copy from Petitioner. This belies Respondents,

and therefore the Court's conclusion, that Respondents had "just cause" to obtain the union's corresponding books and records as required by the statute. Thus, the request to view the LM reports filed by the Union and to inspect the books and records were both requested at the same time. Clearly then, Respondents had no "just cause" to inspect the union's records. It also shows that Respondents' true motive was not to inspect the union's records but to see if they could "dig up dirt" on Mr. Aponte Figueroa for the ongoing union internal election campaign, a reason obviously not contemplated by the statute. For this reason, the Puerto Rico Court of Appeals decision should be reversed.

II. Review is Warranted Because the Puerto Rico Appeals Court Ordered the Production of Documents Relating to E.R.I.S.A, Not in the Union's Possession or Control

The Court of Appeals of Puerto Rico did not appear at all to be concerned that it had ordered petitioner to produce documents that were neither in the possession or control of the union. It stated that it was not persuaded by petitioner's allegation that it was ordering petitioner to produce documents not in its possession or control because " ... federal courts have clarified that under section

201 (c), employees have a right to inspect all the documents than necessary to verify the information contained in the reports presented before the government by the union…." The Court cited, Mallick v. International Brotherhood of Electrical Workers, 749 F.2d at pp. 781 – 783; Fernandez-Montes v. Allied Pilots Association, 987 F. 2d at p. 286; Conley v. United Steelworkers of America, Local Union No. 1014, 549 F. 2d at p. 1125; Sonsten v. Melendrez, 374 F. Supp. 1028-1030 (N.D. Cal. 1974) and other cases therein cited. (App. 15) But the Court failed to take into consideration that the documents in question were clearly documents maintained by a health and welfare and/or pension fund regulated by the Employee Retirement Income Security Act, 29 U.S.C. § 1001, a totally different statute created to regulate funds received by a totally different entity – not the union - for the exclusive benefit of employees. Unfortunately, the Court erroneously reasoned that the production of these documents could be ordered if they were necessary to review the documents filed by the Union before the government. (App. 14) It made no distinction whether the documents requested were in the possession or control of the Union

or whether they were reasonably related to the LM reports filed by labor organizations before the Department of Labor.It is submitted that the Appeals Court of Puerto Rico's clearly erred when it ordered the Union to produce documents which, on their face, are documents maintained by a health and welfare and/or pension fund regulated by the Employee Retirement Income Security Act, 29 U.S.C. § 1001. The Court is aware that Congress enacted ERISA as a "comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 90 (1983). ERISA regulates "private employee benefit plans, including both pension and welfare plans." District of Columbia v. Greater Washington Bd. of Trade, 113 S.Ct. 580, 582 (1992). A "welfare plan" is defined to include, inter alia, any "plan, fund, or program . . . established or maintained by an employer . . . for the purpose of providing its participants and beneficiaries, through the purchase of insurance or otherwise, . . . medical, surgical or hospital care." ERISA 3(1), 29 U.S.C. 1002(1). By ordering the Union to provide ... "(4) copy of all audit reports performed both of the Union as well as the pension and

benefit plan of the Union"... (A p.3) the Appeals Court ordered the Union to produce something clearly outside of Petitioner's possession and/or control documents, covered by the statutory provisions of ERISA, see: 29 U.S.C. 1021. This provision requires, *inter alia,* that administrators provide certain information to beneficiaries including summary plan description and other information to be furnished to participants and beneficiaries. Under section 1024(b), it is the administrators who have the obligation to advise beneficiaries of the different benefits enjoyed by them. Under ERISA this is clearly not the function of a labor organization but of the entity created by law to provide these benefits. The Union therefore, should not have been required to produce documents which were clearly outside of its possession and/or control. Allowing the Appeals Court order to stand is akin to allowing the State to regulate a health and welfare plan, a result which is clearly prohibited under ERISA's general statutory scheme. (29 U.S.C. 1144(a). See: Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 44

(1987). [2] For this reason, we submit the Appeals Court order must be reversed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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Counsel for Petitioner
26 February 2001

[2] In this respect we note that ERISA's general preemption clause, section 514(a), preempts "any and all State laws insofar as they . . . relate to any employee benefit plan." 29 U.S.C. 1144(a). The Congressional intent behind the preemption provision was "eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans." Pilot Life, 481 U.S. at 46. "A law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." Mackey v. Lanier Collection Agency & Services, Inc., 486 U.S. 825, 829 (1988), quoting Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96-97 (1983).

CERTIFICATE OF SERVICE

It is hereby certified that three (3) copies of Petitioner's Writ of Certiorari with Appendix was served by the undersigned on this 26 day of February, 2001 by certified mail return receipt requested upon the following:

Leonardo Delgado Navarro
Attorney of Record for Respondent
Cond. Del Parque 202
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Hon. Clerk
Supreme Court of Puerto Rico
P.O. Box 9022392
San Juan, P.R. 00912-2392

LUIS FELIPE PADILLA

APPENDIX

Certified Translation
08-1-0

IN THE SUPREME COURT OF PUERTO RICO

RAMON GONZALEZ DUARTE, et al Respondent v. JORGE APONTE FIGUEROA, etc. Petitioner	No. CC-2000-811

RESOLUTION

In San Juan, Puerto Rico, on November 21, 2000

The Petition for Certiorari filed is denied.

Agreed by the Court and so certified by the Clerk of the Supreme Court. Justices Mssrs. Rebollo Lopez and Corrada del Rio did not intervene.

Isabel Llompart Zeno
Clerk of the Supreme Court

CERTIFIED BY:
Ani Navarro Williams
U.S. Court Certified
Interpreter Translator

COMMONWEALTH OF PUERTO RICO
IN THE CIRCUIT COURT OF APPEALS
REGIONAL CIRCUIT OF APPEALS
PANEL IV

RAMON GONZALEZ DUARTE, MARIO RIVERA SANTOS, MIGUEL RIVERA COSME Y JOSE ORTIZ Appellees v. JORGE APONTE FIGUEROA, in his character as president of UNION DE TRABAJADORES DE LOS MUELLES, LOCAL 1740, AFL-CIO a/k/a UTM 1740, AFL-CIO Appellants	Appeal from the Court of First Instance KLAN 9901057 Superior Court of San Juan Case No. KE-99-0264

JUDGMENT

In San Juan, Puerto Rico, this 31 of August, 2000.

-I-

The appellants, "Unión de Trabajadores de los Muelles" Local,1740 AFL-CIO ("U.T.M."), and Jorge Aponte Figueroa, in his capacity as President of said entity, request the reversal of a Summary Judgment issued on September 1 1999 by the court of First Instance, Superior Court of San Juan, in the proceeding for a

permanent injunction filed by appellee against appellants, Mario Rivera Santos, Miguel Rivera Cosme and José Ortíz.

Pursuant to the judgment at issue, the Court of First Instance ordered the appellants to permit the examination of certain documents requested by the appellant workers, related to the operations of the Union, pursuant to their rights law as recognized by section 201 (c) of the Labor- Management and Disclosure Act of 1959, 29 U.S.C. sec. 431(c). The court imposed upon the appellants the costs of the proceedings and ordered the payment of Five Hundred dollars ($500) as attorneys fees according to said section.

We Confirm

-II-

As set forth in this recourse, the "U.T.M." is a labor organization as defined in section 3 (i) of the Labor Management Reporting Act of 1959, 29 U. S. C. sec. 402 , with offices in San Juan, Puerto Rico, that represents workers in the waterfront of San Juan, Ponce and Mayaguez. Said entity is affiliated with the International Longshoremen's Association ("I.L.A."). The apppellant Jorge Aponte Figueroa is the president of the "U.T.M."

The appellees are all dock workers, members of the "U. T. M."

The controversy raises certain doubts expressed by appellees with regard to the management of the funds of the "U. T. M" and in a particular the Union dues deducted from the salary of said workers.

On October 6, 1998, the appellees sent a letter to Mr. Aponte Figueroa requesting information from the Union for the purpose of clarifying their doubts. They raised the right to inspect Union documents as granted to them by the section 201 (c) of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. section 431 (c).

The appellees requested the following information for the years 1996 –1997:

1. Copy of the financial records of the Union filed before the federal department of labor in (Forms LM-3);
2. Copy of all audit reports performed both of the Union as well as the pension and benefits plan of the Union
3. A list of active Union members;
4. Copy of all reports of hours worked by the Union employees on a weekly, monthly, and annual basis;
5. Copy of the report rendered by the employers to the Union of the percentage of dues money withheld;

6. Accounts ledger and records of Union payments and expenses;

7. the amount of the new members of the Union that have joined or have become members of the Union, and the amount of money received by the Union for dues and initiation fees.

In response to said letter, the "U. T. M." sent to the Appellees only a copy of the form L. M.-3 filed before the Federal Department of labor for the years 1996-1997.

Pursuant to letter of November 2, 1998, appellees insisted on their request for information. According to appellees, they had doubts because:

> "According to the reports presented by the president there are presently 1300 Union workers which according to our understanding, should produce in the port of San Juan not less than the sum of 500,000 man hours worked. If this is true, the union should the receiving approximate income of over $300,000.00 dollars in approximate income. This amount is substantially different than the one reported in the L. M.-3 for the years 1996 –1997.
>
> This argument questions the correctness of the information set forth in subparagraph 31, 37 and 55 of the LM-3 Forms for the years 1996-1997." The parties met and agreed to refer the appellees' request to the Board of Directors of the "U. T. M.".

While this process was pending, on the January 12, 1999, appellees filed a complaint against appellants Aponte Figueroa, for the alleged violations of the rights of Union workers and irregularities committed by him. Said charge was filed under Article XVIII ("Discipline") of the I.L.A. Constitution. The appellants apparently did not have immediate knowledge of said complaint.

Pursuant to letter of February 2, 1999, the appellants notified appellees that they should permit the inspection of the records so requested subject to certain conditions. Nevertheless, when they became aware of the complaint, appellants decided to detain the examination of the documents, until the administrative procedure before the I.L.A. was resolved. This determination was notified to the appellees pursuant to letter of February 8, 1999.

Given this situation, appellees then proceeded to file the complaint in question, requesting the Court to order appellants to provide the documents in controversy. The appealing party requested the dismissal of the litigation, alleging that, according to section 101 (4) of the Labor – Management Reporting and

Disclosure Act of 1959, 29 U. S. C. section 411 (4), the appellees were required to exhaust the administrative procedure provided by the Union, before they could go to court. In particular, appellants alleged that the appellees were required to file an appeal before the I.L.A. regarding their refusal to provide these documents according to the procedure established in Article XIX of the Constitution of said organization.

The appellees opposed this requirement. Additionally they requested, the court to issue summary judgment in its favor alleging that there was no controversy with regard to the facts. Appellants timely informed the Court that the complaint filed by appellees before the I L.A. had been denied and requested the Court to proceed to dismiss this complaint.[22]

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[22]As set forth in a record, the I L.A. determined that the disparity between the U. T. M. records and be reports filed before the Secretary of labor was due to the fact that the U. T. M. record reflects the dues actually received from the employers ("cash basis") while the reports reflect all of the deductions for dues ("dues checked off") reported by the employers. The I.L.A. concluded that because they were based on different parameters, the data from the source did not coincide with any other period of time. Notwithstanding, it determined that there was no evidence of irregularities by the president of the U. T. M.

On September 1, 1999, pursuant to the judgment of the appeal, the Court of First Instance granted appellees complaint and ordered appellants' to allow the inspection of the documents requested..

In its judgment, the court concluded that the controversy regarding the examination of the documents constituted a matter separate from the accusations filed by the appellees which were questioned in the complaint before the I L.A. The knowledgeable Court understood that the appellees were clearly entitled to examine the documents in which they were interested pursuant to the provisions set forth by Section 201 (c) of the Labor – Management Reporting and Disclosure Act of 1959, 29 U.S.C. sec. 431 (c), and proceeded to order the production of said documents by the appellant. Additionally, it imposed the sum of $500.00 for attorneys' fees.

Not satisfied, Appellants filed the instant appeal.

In its Appeal, the appealing party alleges that the court of First Instance erred in not dismissing the complaint and in

issuing summary judgment in favor of appellees. They also alleged that the Court also erred by ordering the delivery of the documents without considering the conditions that are required by section 201 (c) of the Labor –Management Reporting and Disclosure Act of 1959, 29 U.S.C. section 431 (c), and by applying said precept to documents not contemplated therein.

Rule 36.3 of the Rules of Civil Procedure, 32 L. P. R. A., Ap. III, R. 36.3, authorizes the Court to issue summary judgment when "there does not exist any real or substantial controversy with regard to the material fact and when as a matter of law, summary judgment should be granted in favor of the moving party." See, in general, "Partido Acción Civíl v. Estado Libre Asociado de Puerto Rico "____D.P.R., 2000 J. T. S. 33, at p. 681; Soto Vázquez v. Rivera Alvarado, 144 D.P.R. _____(1997) 97 J.T.S. 145, at page 368. Rodriguez v. "Secretario de Hacienda", 135 D.P.R. ____(1994), 94 J.T.S. 20, at p. 11, 550; Tello v. Eastern Air Lines, 119 D.P.R. 83, 86 (1987); Corp. Presiding Bishop DJC of LDS v. Purcell, 119 D.P.R. 83, 86 (1987); Corp. Presiding Bishop CJC of LDS v. Purcell, 17 D.P.R. 714, 720 (1986).

The purpose of this mechanism is to propitiate the just, rapid and economic resolution of litigation that does not set forth genuine controversies of material facts and do not justify the holding of a trial on its merits. When used correctly, it contributes by helping to clear the Court's calendars. "Partido Acción Civíl v. Estado Libre Asociado de Puerto Rico", 2000 J. T. S. at p. 681-83; López Stubbe v. Gus Lallande, 144 D.P.R. (1998), 98 J.T.S. 9, at pg. 523; "Neca Mortgage Corporation v. A & W Developers S. E.", 137 D. P.R. (1995), 95 J.T.S. 10, at pg. 603; Pilot Life Insurance Company v. Crespo Martínez, 136 D. P.R. ____(1994), at pgs. 20-21.

Summary judgment is only proper in those clear cases when the court has before the truth regarding all pertinent facts and an evidentiary hearing is not needed. "Medina Morales v. Merck, Sharp & Dohme Qímica de Puerto Rico, Inc.", 135 D.P.R. ____(1994), 94 J.T.S. 52, at page 11,786; "J.A.D.M. v. Centro Com. Plaza Carolina", 132 D.P.R. 785, 802 (1993). If doubts arise over the propriety of summary judgment, the court should restrain from granting the same and allow the parties the opportunities of an

evidentiary hearing. See, "Rivera Rodríguez v. Departamento de Hacienda", 149 D.P.R. ____(1999), 99 J. T. S. 144 , at pg. 53; "Bonilla Medina v. Partido Nuevo Progresista", 140 D.P.R. ____(1996), 96 J.T.S. 33, at pg. 790; Rivera v. Superior Pkg., Inc. 132 D.P.R. 115, 133 (1992).

The Supreme Court of Puerto Rico has established that this mechanism is available in cases of injunction, where there exists no real or substantial controversy real with regard to the facts. See, "H.M.C.A. (P.R.) V. Contralor", 133 D.P.R. 945, 957 (1993); Torres Ponce v. Jiménez, 113 D.P.R. 58, 62 (1982). It is a determination left to the discretion of the Court of First Instance. PFZ Properties v. General Accident Insurance, Corp., 136 D.P.R. ____ (1994), 94 J.T.S. 116, at page 125.

In the instant situation we do not believe that the court erred by issuing its Summary Judgment. The controversy between the parties in this sense is that is evidently one of law, which is regarding the authority of appellees to gain access to the information requested. See Soto v. Vázquez v. Rivera Alvarado, 144 D.P.R. _____(1997), 97 J.T.S. 145, at pags. 368-69; Pilot Life

Insurance Company v. Crespo Martínez, 94 J.T.S. at pg. 21; compare with the instant case with H.M.C.A. (P.R.), Inc. v. Contralor, supra; See additionally Local No. 1419, ILA, General Longshore Workers Union, AFL-CIO v. Smith, 301 F. 2d 791 (5th Cir. 1962); Sosten v. Melendrez, 374 F.Supp. 1028, 1030 (N.D. Cal. 1974); compare, English v. Local Union No. 46, 654 F.2d 473 (7th Cir. 1981).

The appellant party also raises argues that the Court erred by not dismissing the complaint, as well as in its interpretation of section 201 (c) of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. sec. 431 (c).

The federal law of reference was approved by the Congress of United States with the principal purpose of protecting individual employees from the illegal practices that could be committed by Unions. See 29 U.S.C. sec. 401 and ss.: International Union, United Automobile, Aerospace & Agricultural Implement Workers of America v. Brock, 783 F.2d 237, 239 – 240 (D.C. Cir. 1986); Mallick v.International Brotherhood of Electrical Workers, 749 F.2d 771, 776 (D.C. Cir. 1984); Conley v. United States

Steelworkers of America, Local Union No. 1014,

549 F. 2d 1122, 1124, (7th Cir. 1977).

The statute, among other things, establishes a Bill of Rights were members of labor organizations are required to obey 29 U.S.C. sec. 411. Among the employee rights that the Unions that are bound to respect, is the right to file actions against the Union ("right to sue"). The exercise of this right, notwithstanding, is ordinarily subject to be requirements of exhaustion of reasonable internal remedies set forth by the Unions. Section 101(a)(4) of the law states, in this sense:

(4) Protection of the right to sue

> No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in any such action or proceeding, or the right of any member of the labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislate; Provided, that any such member may be required to exhaust reasonable hearing procedures (ut not limited to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organization or any officers thereof: And provided further, that no interested employer or employer association shall directly or indirectly finance in, encourage, or participate in, except as a

party, any such action, proceeding, appearance, or petition.

29 U.S.C. section 411 (a)(4).[222]

The law also requires also a detailed scheme to regulate the records that should be kept by labor organizations and the reports that have to be presented by them. In particular, subparagraph III of the statute, 29 U.S.C. section 431 and others, establish the obligation of the Unions to submit to the Secretary of the Federal Department of Labor copies of their constitutions and bylaws in addition to filing detailed annual financial reports containing the details required by

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[222]Consistent with this disposition, Article XIX of the I.L.A. Constitution states:

> No member or local union shall institute any civil action, sue, or proceeding in any court against the I doubt the, any of its Local Unions, or district council or district organization, or any officers or member of the I.L.A., any of its Local Unions or District Council or District Organization on account of any controvery for which a remedy by trial or appeal is provided for in this Constitution, unless and untill he has first exhausted all such remedies of trial and appeal. The Prohibition contained herein shall not extend beyond four (4) months from the date that a member or Local Union initiates a controversy by filing with the proper individual.

said statute. 29 U.S.C. sec. 431-433.

The law also governs the time during which these unions are bound to maintain the records. 29 U.S.C. sections 435 and 437.

Section 208 of said law, 29 U.S.C. section 438, authorizes the Secretary of Labor to adopt additional regulations to implement these obligations. The rule adopted according to said authorization, 29 C.F.R. sections 402.1-403.11, establishes distinct categories of reports (e.g., "LM-1," "L-M-2", "LM-3" and "LM-4") and the requirements for each.

The law sets forth that intentional violations of these precepts constitute the crime and empowers the Secretary of Labor of the United States to appear before the Court to demand compliance with the same. See 29 U.S.C. sections 439 and 440.

On its part, section 201 (c) of the law, 29 U.S.C. sec. 431 (c), authorizes Unionized workers' to require that the Union to which they belong provide them with the mentioned information as well, conferring concurrent jurisdiction to State Courts to entertain suits that claim this obligation. Said precept states:

> Every labor organization required to submit a report under this subchapter shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under duty enforceable practice at the suit of any member of such organization in any state court of competent jurisdiction or in the District Court of United States for the district in which such labor organizations maintains its principal office, to permit such member for just cause to examine any books, records, and accounts necessary to verify such report. The court in such action may, in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs , allow a reasonable attorneys fees to be paid by the defendant, and cost of the action.

In the instant case the request of the appellees to examine the documents of the U.T.M. was based precisely on these on this precept. The appellants argue, notwithstanding, that the Court of First Instance was obligated to this dismiss the request of the appellees because they did not exhaust their administrative remedies before the Union, as required by section 101(a)(4) of the federal statute, 29 U.S.C. section 411 (a)(4). In particular they allege that the appellees were obligated to exhaust the process set forth in Article XIX of the I.L.A. Constitution.

Federal courts, nevertheless, have not considered that the requirement to exhaust all remedies contained in section 101(a)(4) of the Labor Management Reporting and Disclosure Act constitutes an absolute bar that prevents courts from considering claims by workers against Unions when they have not exhaustive their remedy. In said jurisdiction is understood, that although there exists a policy directed at promoting the utilization of internal mechanisms, the courts have the freedom to examine, at their discretion, whether to excuse an employee of this requirement, when it results unadvisable and/or said remedies are inadequate. Clayton vs. International Union, Etc., 451 U.S. 679, 685-696. NLRB vs. Industrial Union of Marine and Ship. Wkrs., 391 U.S. 418, 422 – 428 note 8 (1968); Chadwick v.International Brotherhood of Electrical Workers, 674 F.2d 939, 940-942 (D.C. Cir. 1982; Johnson vs. General Motors 641 F.2d 1075 , 1077 to 1083 (2d Cir. 1981); Bise v. . vs. International Brotherhood of Electrical Workers 618 F.2d 1299, 1,302-1,304 (9th Cir. 1979); Semancik v.United Mine Workers of America District #5, 466 F.2d 144, 150-151 (3rd Cir.1972; Harris vs. International Film Association Local No. 1291 321 F.2d 801, 802-806, (3rd Cir.

1963); Detroy vs. American Guild of Variety Artists, 286 F.2d 75, 76-81 (2nd Cir. 1961.)

This determination depends on this particular circumstances of each case, Bise v. International Brotherhood Electrical Wkrs. 618 F.2d at p. 1303, the Union then having the burden of establishing the particular circumstances of said situation, and not the employee, their internal proceedure is adequate and as such its exhaustion is justified. Johnson vs. General Motors, 641 F.2d pages and 79 to 1080; see also, Fruits and Vegetable Packers and Warehouse Local 760 vs. Morley, 378 F.2d 738, 744 – 745 (9th Cir, 1967).

In the specific context of these claims for the production of documents under section 201(c) of the above cited federal law, federal courts have admitted that the exhaustion requirement of remedies is satisfied when employees have directed the request to examine documents directly to the Union prior to claiming such examination through the Court.. Fruit and Proved and Vegetable Packers and Warehousemen, Local 760 v. Morley, 378 F.2d at pp. 743 to 744; Lykins v.Aluminum Workers Intern. Union, 510 F.

Supp. 21, 24 (E.D. Pa. 1980); Richardson vs. National Post Office Mail Handlers, 442 F. Supp. 188, 191-192 (E. D. Va.1977); Sosten v. Melendrez, 374 F.Supp. at p. 10301 McCraw v. United Ass'n of Journey & App. of Plumbing, Etc., 216 F. Supp. 655, 663 (E. D. Tenn. 1963); Haiduk v. Atlantic Independent Union, 31 F. R. D. 241, 2 43 (E. D. Pa. 1962).

In the instant case, the workers requested from "U.T.M." the production of the documents in question. Notwithstanding the fact that in the beginning appellants were willing to allow the examination of the majority of the documents requested, subsequently they denied their inspection. We believe, under the circumstances, that the Court of First Instance would have abused its discretion if it had concluded that the appellees were not obligated to exhaust their appeal rights under the I.L.A., See Clayton vs. International Union Etc., 5 451 U.S. at pp. 685 to 696 and notes 13, and 14,; N..L.R.B.. vs. International Industrial Union of Marine and Ship. Workers, 391 U.S. at pp. 422 – 428 and n. 8, Mallick v. International Brotherhood of Electrical Workers, 814 F.2d 674, 679 to 680 (D.C. Cir. 1987); Fuit and Vegetable Packers and Warehouse

and Local 760 v. Morley, 378 F.2d at pp. 744 to 745, Sosten v. Melendrez,, 374 F.Supp. at pp. 1030 to 1031.

On the date of the judgment of the court of First Instance, the I.L.A. had adversely adjudicated the complaint of appellees, so that there did not exist a procedure pending between the parties. The appellants argue nevertheless, that this determination by the union required the court to dismiss the present proceeding at bar. We disagree.

It is not clear whether the I.L.A. decision in this case can constitute *res judicata* . See 31 L.P.R.A. sec. 3343, compare, Acevedo Santiago v. Western Digital Caribe, 140 D.P.R. ____ (1996) 96 J.T.S. 42, , pp. 880 – 882 (discussing the application of the impediment of the administrative arena.) The claim of the employees that they be permitted to examine documents requested by them this case, in this sense, is a different matter and clearly independent of its complaint against the President of the Union for irregular handling of Union funds. See, A&P Gen. Contractors v. Asociation Caná, 110 D.P. R. 753 , 763 (1981); see also Landry v. Sabine Independent Seamen Association 623 F.2d 347, 349-350 (5th

Cir. 1980); Local No. 1419, ILA, General Longshore Workers Union, AFL-CIO v. Smith 301 F.2d at pp. 792 to 794.

In the preceding regarding the complaint filed by the appellees before the I.L.A., decided in favor of Mr. Aponte Figueroa, nothing was said regarding the request for the examination of documents by appellees which was made before the Court of First Instance, which we believe is separate and independent of any discovery of evidence which undoubtedly appellees would have before the union.

The appeallant party has also argued that the Court erred when it ordered the delivery of the documents without considering the conditions which are required by section 201 (c) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. section 431 (c). In particular, they point to the fact that according to the text of said provision, the appellees were obligated to establish the existence of just cause for the examination of the documents.

This relates to an underlying requirement which is indispensable in order to grant a request under said section. Now then, federal courts have given said requirement the rigor suggested

by the appellants, rather the same is to applied in a pragmatic manner on the basis of the circumstances of each case, in order to obtain the goals pursued by the statute:

> The standard for determining whether there was just cause is necessarily minimal. Just cause need not be shown beyond a reasonable doubt, nor by a preponderance of the evidence. It need not be enough to convince a reasonable man that some wrong has been done; it is enough if a reasonable union member would be put to further inquiry. Perhaps it will be that a certain item is disproportionately high.... or that an officer contends that he did not incurred the claim expenses... Irrespective of the nature of the asserted cause, the test must be whether reason would require substantiation.

Fruit and Vegetable Packers and Warehousemen local 760 vs. Morley, 378 F.2d at p. 744. See also, Mallick v. International Brotherhood of Electrical Workers 749 F.2d at pp. 781 – 783; Landry vs. Sabin Independent Semen's Ass'n 623 F2d at pg. 349; Gabauer v. Woodcock, 594 F. 2d 662, 665 (8th Cir. 1979); Sosten v. Melendrez, 374 F. Supp. a pps. 1030-1031; Rekant v. Rabinowitz, 194 F. Supp. 194 (E.D. Pa 1961).

As it is clarified in Fernandez- Montes v. Allied Pilots Association:

> "Just cause" under section 431(c) refers to circumstances that would put a reasonable union member on notice that further investigation is warranted to assure that the union's L. M. findings with the Secretary of labor (required under 431), comport with the union's own records of its activities. Establishing just cause requires the union member to state what he wishes to verify in the LM Reports and how the particular union records he is requesting are expected to assist him in doing so.

987 F.2d 278, 285 (5th Cir. 1993).

What constitutes just cause depends, therefore, on the particular circumstances of each case and said criteria should be interpreted liberally; above all, when the purpose of the person requesting is not to harass or bother the union. Mallick v. International of Electrical Workers, 749 F.2d at p. 785; Fruit and Vegetable Packers and Warehousemen Local 760 v. Morley, 378 F.2d at p. 743; Sosten v. Melendrez, 374 F. Supp.at pp. 1030 to 1031.

In the instant case, appellees expressed that the purpose in examining the documents requested was to verify that the performance of the Union was appropriate, given certain disturbing matters raised which they believed were inconsistent with certain

reports filed with the Secretary of Labor. Clearly, this is a legitimate purpose. As members of the "U.T.M." the appellees have a right to be informed of the operations of the organization that represents them before their employer, including the use and the disposal of the monies paid by them and other Union members as dues.

The appellees allege finally, that the Court exceeded its authority in ordering the production of all the documents requested by appellees, some of which cannot contemplated by the above cited section 201 (c).

Federal courts have clarified that under section 201 (c), employees have a right to inspect all the documents than necessary to verify the information contained in the reports presented before the government by the union. Mallic v. International Brotherhood of Electrical Workers, 749 F.2d at pp. 781 – 783; Fernandez-Montes v. Allied Pilots Association, 987 F. 2d at p. 286; Conley v. United Steelworkers of America, Local Union No. 1014, 549 F. 2d at p. 1125; Sonsten v. Melendrez, 374 F. Supp. al las p. 1030-1031; Rekant v. Rabinowitz, 194 F. Supp. 194. See also, Local No. 1419,

ILA, General Longshore Workers Union, AFL-CIO v. Smith, 301 F. 2d at pp. 795-796. Compare the McGraw v. United Ass'n of Journey & App. of Plumbing, Etc., 216 F. Supp. at pp. 663-664.

These documents can be used by a requested orally as long as they are reasonable. Fruit and Vegetable Packers and Warehousemen Local 760 vs. Morley 378 F.2d at pp. 742 to 743. The parties have a right to be assisted by experts during inspection and to obtain copies that are reasonably necessary to obtain the same, subject to the claim by the union regarding privilege or confidentiality. Manic vs. International Brotherhood of Electrical Workers, 814 F.2d at pp. 681 – 683; Mallic v. International Brotherhood of Electrical Workers, 814 F.2d at pp 681-683; . Mallic v. International Brotherhood of Electrical Workers 749 F.2d at p. 785; Gauber v. Woodcock, *594* F.2d at 666; Conley v. United Steelworkers of America Local Union No. 1014, 549 F.2d at pp. 1124-1125; Antal v. District 5, United Mine Workers of America, 451 F.2d 1187, 1188 -1189 (3rd Cir. 1971); Local No. 1419, ILA, General Longshore Workers Union AFL-CIO vs. Smith, 301 F.2d at

pp. 796.

In light of these factors we consider that the order of the court below requiring the production of the documents in controversy in this case was not excessive in the balance. The error was also not committed.

For reasons expressed herein, we confirm the Judgment on appeal.

So pronounced and mandated by the Court and certified by the Clerk of the Court.

s/ Gladys E. Ortega Ramírez

Undersecretary General
Aida Ileana Oquendo Graulau
General Secretary

CERTIFIED BY:
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